

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**BGC PARTNERS, INC. d/b/a  
NEWMARK GRUBB KNIGHT FRANK**

**and**

**Case 28-CA-178893**

**PATRICK S. THURMAN**

**ORDER**

Respondent BGC Partners, Inc.'s Motion for Summary Judgment is denied. The Respondent has failed to establish that there are no genuine issues of material fact warranting a hearing and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., March 21, 2017.

MARK GASTON PEARCE,                      MEMBER

LAUREN McFERRAN,                      MEMBER

ACTING CHAIRMAN MISCIMARRA, dissenting.

Contrary to my colleagues, I would issue a notice to show cause why the Respondent's Motion for Summary Judgment should not be granted. This case involves, among other issues, a dispute as to whether Respondent BGC Partners, Inc. (BGC) is the employer of the Charging Party or is an employer at all within the jurisdiction of the Board under Section 2(2), (6), and (7) of the Act. The Respondent moves for summary judgment on the ground that it is not an employer and submitted with its motion a sworn declaration from one of its attorneys. The Respondent argues that the facts set forth in the motion and declaration demonstrate that it is solely a holding company and employs no employees, and therefore it is not an employer under the Act.

In his response, the General Counsel argues that the Board should deny the Respondent's motion, because by denying in its answer to the complaint and its motion that it is an employer and that it has an employment relationship with the Charging Party, the "Respondent has put the matter into dispute." The General Counsel further argues that under Section 102.24(b) of the Board's Rules and Regulations, it "is not required that either the opposition or the response be supported by affidavits or other documentary evidence showing that there is a genuine issue for hearing."

In my view, the General Counsel's response is deficient. As I found in *L'Hoist North America of Tennessee, Inc.*, 362 NLRB No.110 (2015), and *Leukemia and Lymphoma Society*, 363 NLRB No. 123 (2016), when a party files a motion for summary judgment that fairly establishes the absence of any dispute as to material facts and that the party is entitled to judgment as a matter of law, the General Counsel must respond with something more than conclusory statements and at least explain in reasonably concrete terms why a hearing is required. To meet this standard, the General Counsel must normally identify material facts that are genuinely in dispute.

Applying the above framework, I would find that the General Counsel's opposition is insufficient, because in response to the Respondent's motion and accompanying affidavit, it provides only conclusory assertions and makes no reasonable effort to identify what genuine disputes of material fact, if any, warrant a hearing. Therefore, I would issue a notice to show cause why the Respondent's motion should not be granted.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN